Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1062

THOMAS K. McMANUS and
MARGARET F. McMANUS, ET AL.,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE PETITIONERS IN REPLY

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No. 78-1062

THOMAS K. McMANUS and
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Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ESTATE OF JOHN C. GUTLEBEN, Deceased,
UNITED CALIFORNIA BANK, Executor and
VERA B. GUTLEBEN, Surviving Wife,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ESTATE OF ELEANOR B. CHICK, Deceased,
ESTATE OF NELSON H. CHICK, Deceased,
NELSE CHICK SILER, Executrix and
DOROTHY W. CHICK,

Petitioners,

v.

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Petitioners quarrel NOT with Respondent's statement.

Petitioners quarrel with Respondent's conclusion: that a sale made by a taxpayer AFTER an action to condemn his property can possibly be a sale made in the "ordinary course of the taxpayer's trade or business." On this question, the honorable Courts of Appeal are in CONFLICT.

McManus v. Commissioner of Internal Revenue (United States Court of Appeals for the NINTH Circuit, 1978), 583 F.2d 443, holds YES.

Commissioner of Internal Revenue v. Tri-S Corporation (United States Court of Appeals for the TENTH Circuit, 1968) 400 F.2d 862, held NO.

Casalina Corporation v. Commissioner of Internal Revenue (United States Court of Appeals for the FOURTH Circuit, 1975, 511 F.2d 1162), held NO.

Juleo, Inc. v. Commissioner of Internal Revenue (United States Court of Appeals for the THIRD Circuit, 1973), 483 F.2d 47 held YES.

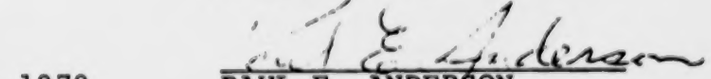
Ridgewood Land Company, Inc. v. Commissioner of Internal Revenue (United States Court of Appeals for the FIFTH Circuit, 1973), 477 F.2d 135, held NO.

The United States Tax Court has been similarly confused. In Tri-S Corporation, 48 T.C. 316 (1967), a unanimous Court held condemnation to be capital. Its decision was affirmed. In Juleo, Inc., 30 T.C.M. 284 (1968), it held the same way: the gain is a capital gain. Property under condemnation cannot be held for sale in the ordinary course of business to customers. Reversed. In Ridgewood Land Co., Inc., 31 T.C.M. 39 (1972), the Tax Court followed the same rule. Affirmed. Again in Maurice F. Fabiani, 32 T.C.M. 941 (1973), a sale after condemnation was held to result in capital gain. Similarly, in Casalina Corp., 60 T.C. 694 (1973). In Gustav B. Biederman, 68 T.C. 1 (1977), the Tax Court held capital gain. Respondent filed an appeal to the FOURTH Circuit, but it was dismissed, probably because of its earlier decision in Casalina Corp. Which is the correct rule?

Certiorari has previously been denied by this Court in Juleo, Inc.,414 U.S. 1103 (1973) and in Stockton Harbor Industrial Co., 349 U.S. 904 (relied upon the NINTH Circuit below in an earlier case holding to the same effect).

Certiorari should be granted to resolve the conflict among the NINTH, TENTH, FIFTH, FOURTH and THIRD Circuit Courts of Appeals.

Respectfully submitted,



DATED:
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